

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 201809996	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/02/2018 7:42 PM	Location of Incident: 28th Precinct stationhouse	Precinct: 28	18 Mo. SOL 6/2/2020	EO SOL 1/17/2021	
Date/Time CV Reported Mon, 12/03/2018 9:24 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/03/2018 9:24 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ronnie Caraccioli	02152	936301	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Isabelo Adames	15260	948590	028 PCT
2. SGT Jeffrey Filizzola	00300	934860	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ronnie Caraccioli	Abuse: Police Officer Ronnie Caraccioli interfered with § 87(2)(b)'s use of a recording device.	
B.POM Ronnie Caraccioli	Force: Police Officer Ronnie Caraccioli used physical force against § 87(2)(b)	
C.POM Ronnie Caraccioli	Abuse: Police Officer Ronnie Caraccioli threatened to arrest § 87(2)(b)	
D.POM Ronnie Caraccioli	Abuse: Police Officer Ronnie Caraccioli searched § 87(2)(b)'s recording device.	
E.POM Ronnie Caraccioli	Abuse: Police Officer Ronnie Caraccioli deleted information on § 87(2)(b)'s electronic device.	

Case Summary

On December 03, 2018, § 87(2)(b) filed the following complaint with the CCRB via phone.

At approximately 7:42 p.m. on December 02, 2018, § 87(2)(b) and § 87(2)(b) walked into the 28th Precinct stationhouse. § 87(2)(b) told Police Officer Ronnie Caraccioli, of the 28th Precinct, who was assigned to the Telephone switchboard, that she wanted to file a criminal report about an incident that occurred on December 01, 2018. PO Caraccioli told § 87(2)(b) that he could not file her complaint. § 87(2)(b) then asked for PO Caraccioli's name and shield number and he told her that she could take a picture of his nameplate and shield. § 87(2)(b) then took out her phone and took a picture of PO Caraccioli's nameplate and shield. She then moved her phone to take a picture of a poster on the wall, which detailed how to file a CCRB complaint, when Police Officer Isabello Adames, also of the 28th Precinct informed PO Caraccioli that civilians could not take pictures in the stationhouse. PO Caraccioli then put his hand in front of § 87(2)(b)'s phone, preventing her from taking a picture of the poster (**Allegation A: Abuse of Authority: Interference with Recording:** § 87(2)(g)).

PO Caraccioli approached § 87(2)(b) and after a brief physical struggle, grabbed § 87(2)(b)'s phone out of her hands (**Allegation B: Force: Physical Force:** § 87(2)(g)). PO Caraccioli also told § 87(2)(b) she could be arrested for recording in the stationhouse (**Allegation C: Abuse of Authority Threat of Arrest:** § 87(2)(g)). PO Caraccioli then briefly spoke with § 87(2)(b) in a separate room, where he allegedly told her that § 87(2)(b) would be arrested if she did not calm down (also **Allegation C**). When he and § 87(2)(b) walked back into the main room of the stationhouse, PO Caraccioli gave § 87(2)(b) her phone back and allegedly told her to delete the recordings she made or she could be arrested (also **Allegation C**). PO Caraccioli then looked at § 87(2)(b)'s phone while § 87(2)(b) deleted the pictures on her phone (**Allegation D: Abuse of Authority: Search of recording device:** § 87(2)(g)) and **Allegation E: Abuse of Authority: Electronic device information deletion:** § 87(2)(g)). § 87(2)(b) then wrote down PO Caraccioli's name and shield number on a piece of paper and left the stationhouse.

The investigation obtained stationhouse surveillance video that captured the entirety of this incident (**Board Review 01**). A summary of this video was prepared by the investigation (**Board Review 02**).

Findings and Recommendations

Allegation A: Abuse of Authority: Police Officer Ronnie Caraccioli interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) provided an in-person statement at the CCRB on December 14, 2018 (**Board Review 3**). § 87(2)(b) provided a statement over the phone on February 08, 2019 (**Board Review 4**) and § 87(2)(b) provided a statement over the phone on February 13, 2018 (**Board Review 5**). PO Caraccioli provided a statement on April 02, 2019 (**Board Review 06**) and PO Adames provided a statement on April 09, 2019 (**Board Review 07**).

It is undisputed that inside the stationhouse, § 87(2)(b) used her phone to record PO Caraccioli's shield and nameplate. PO Caraccioli then told § 87(2)(b) she could not record and blocked her phone from recording before taking the phone from her.

In her statement, § 87(2)(b) said that she asked PO Caraccioli if she could take a picture of his shield. PO Caraccioli posed for a picture and § 87(2)(b) then took three or four pictures of his shield with her phone. PO Adames, who was standing nearby, told PO Caraccioli that § 87(2)(b).

§ 87(2)(b) could not take pictures of him. At this point, PO Caraccioli “jumped on her,” stopping her from taking a picture.

§ 87(2)(b) and § 87(2)(b)'s statements were generally consistent with § 87(2)(b)'s, although they stated that after PO Adames said that recording in the stationhouse was prohibited, PO Caraccioli then grabbed § 87(2)(b)'s cellphone from her hand.

PO Caraccioli stated that § 87(2)(b) asked him for his name and shield number, but she did not have a pen to write with so he told her that she could take a picture of his shield. § 87(2)(b) then took her cellphone out, but PO Caraccioli was able to see that instead of taking a picture like he instructed her to, she was taking a video recording. PO Caraccioli then backed up and told § 87(2)(b) that she could not record in the stationhouse multiple times. He then attempted to grab her cellphone because she would not stop recording. He did not recall receiving instructions from Sergeant Jeffrey Filizzola, also of the 28th Precinct, who was present inside the stationhouse. He did not recall if there were prisoners in the stationhouse that § 87(2)(b) would have recorded. He also did not remember if there were any other civilians in the stationhouse and did not recall any specific activity going on around him.

PO Adames stated that § 87(2)(b) took her phone out and held it up and said she was recording. PO Caraccioli told her to stop recording and to leave multiple times. PO Adames noted that the holding cells were directly behind where PO Caraccioli was standing, so § 87(2)(b)'s recording could have captured the holding cells.

Stationhouse video footage (timestamp 04:50-05:41) (**Board Review 01**) shows § 87(2)(b) point at PO Caraccioli's shield and then reach into her bag and take out her phone. PO Caraccioli then turns the left side of his chest toward § 87(2)(b) and § 87(2)(b) and points to his shield. He then points to the red poster on the wall twice. § 87(2)(b) has her phone in her hands and is touching the screen. PO Caraccioli is standing approximately three feet in front of § 87(2)(b). § 87(2)(b) reaches over the gate with her phone in her hand and puts her phone right up to PO Caraccioli's shield. PO Caraccioli takes a step back and then manipulates his shield so that it is angled in a way that § 87(2)(b)'s phone camera will be able to capture it. PO Caraccioli stands in front of § 87(2)(b) while she appears to be taking a picture or video of his shield. § 87(2)(b) then turns to her left and points her phone camera towards the red poster on the wall.

At this point, PO Caraccioli looks to his left and then quickly looks back to § 87(2)(b) who appears to be taking a picture or video with her phone of the red poster on the wall. PO Caraccioli then moves his right arm to block § 87(2)(b) from taking a picture of the poster. He then walks through the gate to the public area of the stationhouse, puts his hand on § 87(2)(b)'s shoulder and appears to attempt to grab her phone, but she pulls away. PO Caraccioli then points toward another sign on the wall, (determined by the investigation to inform civilians that recording is prohibited), and grabs § 87(2)(b)'s phone from her after a brief struggle (as described in more detail below under **Allegation B**).

While it is unclear from the video if § 87(2)(b) is taking pictures or videotaping, it does show that she records PO Caraccioli's shield and the poster with the CCRB information on it. Nothing about the way she is holding her phone in the video indicates that she is recording anything other than PO Caraccioli's shield and the CCRB poster.

According to Patrol Guide Procedure 203-29, members of the public are not allowed to photograph and/or record police activity within department facilities. Members of the service may

order any member of the public recording within Department facilities to stop such activity
(Board Review 08).

§ 87(2)(g)

Allegation B: Force: Police Officer Ronnie Caraccioli used physical force against § 87(2)(b)

It is undisputed that PO Caraccioli took § 87(2)(b)'s cellphone from her for the sole purpose of stopping her from recording.

§ 87(2)(b) stated that, after PO Adames told him that she could not take pictures, PO Caraccioli grabbed her on the upper right side of her body while she held her phone against her chest. They were struggling over the phone for approximately three minutes, when § 87(2)(b) and § 87(2)(b) stood up and § 87(2)(b) told § 87(2)(b) to let the phone go. She then let PO Caraccioli take the phone from her.

§ 87(2)(b) and § 87(2)(b)'s statements were generally consistent with § 87(2)(b)'s, except they both described PO Caraccioli pushing § 87(2)(b) up against a wall of the stationhouse as he tried to take the phone from her.

PO Caraccioli stated that after he told § 87(2)(b) to stop recording several times, she continued to hold her phone. PO Caraccioli then got a hold of § 87(2)(b) and attempted to grab her phone from her, but he was unable to because she turned her back to him and was moving in circles to avoid him. He did not initially recall if he ever grabbed the phone from § 87(2)(b) or ever came into possession of the phone. After watching surveillance video footage, he acknowledged that he did come into possession of § 87(2)(b)'s phone. He said that he took the phone to stop § 87(2)(b) from recording. PO Caraccioli did not recall if he ever told § 87(2)(b) to leave.

PO Adames stated that at some point an officer had possession of § 87(2)(b)'s phone, although he did not recall which officer this was. He did not acknowledge any force being used against § 87(2)(b). After watching video, PO Adames acknowledged that PO Caraccioli was the officer that took § 87(2)(b)'s cellphone, but he never spoke to PO Caraccioli about why he took the cellphone.

Stationhouse video footage (Timestamp 05:35-6:06) (Board Review 01) shows that, after PO Caraccioli walked past the gate into the public area of the stationhouse, he puts his left hand on § 87(2)(b)'s right arm and then reaches for her phone with his right hand. PO Caraccioli then puts his right hand on § 87(2)(b)'s right shoulder and his left hand on her left shoulder and turns her body towards a white sign on the wall and points to it (determined by the investigation to say that recording in the stationhouse was prohibited). He then grabs § 87(2)(b)'s phone with both his hands. § 87(2)(b) then stands up and approaches PO Caraccioli and § 87(2)(b) and appears to say something to them and puts his hand in between them. PO Caraccioli takes the phone from § 87(2)(b)'s hands. He then walks towards the door of the gate and walks through it with § 87(2)(b)'s phone.

From the surveillance footage, the investigation determined that in order to come into possession of § 87(2)(b)'s phone, PO Caraccioli placed his hands on § 87(2)(b)'s shoulders and then forcefully took the cellphone from her hands.

Patrol Guide Procedure 203-29 states that members of the service may order any member of the public who is photographing or recording within department facilities to stop such activity. If such a person refuses to stop, they then should be ordered to leave the premises. If such person refuses to leave the premises, members of the service may take proper enforcement action under the trespass statutes (**Board Review 08**).

According to Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (**Board Review 09**).

§ 87(2)(g)

Allegation C: Abuse of Authority: Police Officer Ronnie Caraccioli threatened to arrest

§ 87(2)(b)

Allegation D: Police Officer Ronnie Caraccioli searched § 87(2)(b)'s recording device.

Allegation E: Abuse of Authority: Police Officer Ronnie Caraccioli deleted information on § 87(2)(b)'s electronic device.

It is undisputed that PO Caraccioli threatened to arrest § 87(2)(b). Additionally, it is undisputed that PO Caraccioli told § 87(2)(b) to delete the recordings she had taken on her phone.

§ 87(2)(b) stated that PO Caraccioli gave her phone back to her and told her to delete the pictures on her phone or she would be arrested. She said nothing back to PO Caraccioli and deleted the pictures.

§ 87(2)(b) stated that as PO Caraccioli attempted to grab § 87(2)(b)'s cellphone out of her hand, he threatened to "lock her up." PO Caraccioli then went into a separate room with § 87(2)(b) and told her that § 87(2)(b) would be arrested if she did not calm down. Then, when PO Caraccioli gave § 87(2)(b) her cellphone back, he told her to erase the pictures she had taken or she would go to jail.

§ 87(2)(b) did not acknowledge hearing PO Caraccioli threaten to arrest § 87(2)(b). He stated that PO Caraccioli gave § 87(2)(b) her phone and told her to delete the pictures she took and to show him. § 87(2)(b) put her phone in front of PO Caraccioli so that he could see, and then deleted the pictures.

PO Caraccioli stated that when he initially told § 87(2)(b) to stop recording, he told her that if she did not stop, she could get arrested. He stated she could have been arrested for disorderly

conduct, trespassing, or for recording in the stationhouse. According to PO Caraccioli she could have been arrested for disorderly conduct because she was angry and loud and would not stop recording when he asked her to. He did not recall if she cursed or made any threatening statements. PO Caraccioli did not recall if there were prisoners in the stationhouse that § 87(2)(b) would have recorded. He also did not remember if there were any other civilians in the stationhouse. Additionally, he did not recall if he ever told § 87(2)(b) to leave the stationhouse. PO Caraccioli stated that he told § 87(2)(b) to delete the recordings she had made, although he was unsure if § 87(2)(b) actually deleted the pictures. He denied telling § 87(2)(b) that she would be arrested if she did not delete the pictures. He also denied searching § 87(2)(b)'s phone.

PO Adames' statement was generally consistent with PO Caraccioli's statement except PO Adames added that the holding cells were directly behind where PO Caraccioli was standing, so § 87(2)(b)'s recording could have captured the holding cells, but he could not remember if anyone was in the holding cells or if there was any sensitive police activity going on at the time. PO Adames also could not recall which officer told § 87(2)(b) to stop recording or that she could be arrested. He also could not recall whether any officer looked through § 87(2)(b)'s phone or told her to delete pictures.

Stationhouse video footage (Timestamp 05:25-06:00) (**Board Review 01**) shows that approximately eight seconds elapse between the time PO Caraccioli appears to stop consenting to § 87(2)(b)'s recording and him beginning to attempt to take her phone.

The video footage (Timestamp 09:10-10:06) also shows that PO Caraccioli hands § 87(2)(b) the cellphone and she then gives it to § 87(2)(b) then holds her phone, while touching the screen with her thumbs. The screen on the phone changes, and she then holds the phone so that PO Caraccioli can see the screen. While § 87(2)(b) is holding the phone in front of him, PO Caraccioli twice points at the sign on the wall that prohibits recording in the stationhouse. § 87(2)(b) continues to hold the phone in front of PO Caraccioli and appears to be touching the screen while holding the phone. PO Caraccioli is looking at the phone screen. § 87(2)(b) then gestures at her phone screen with her finger and then the screen goes dark. When asked what was being discussed during this interaction, both PO Caraccioli and PO Adames stated they did not recall.

The video also shows that aside from § 87(2)(b) and § 87(2)(b) no other civilians are present in the civilian waiting area and no other police action is occurring in the vicinity of § 87(2)(b).

PO Caraccioli acknowledged telling § 87(2)(b) to delete the recordings on her phone and the video corroborates § 87(2)(b)'s statement that PO Caraccioli looked at § 87(2)(b)'s phone to confirm deletion.

According to Patrol Guide Procedure 203-29, members of the service may order any member of the public who is photographing or recording within department facilities to stop such activity. If such a person refuses to stop, they then should be ordered to leave the premises. If such person refuses to leave the premises, members of the service may take proper enforcement action under the trespass statutes. Additionally, an officer should not delete any pictures or recordings from an observer's recording device or order an observer to delete such pictures or recordings. Furthermore, when probable cause exists that a recording device contains evidence of a crime, officers must request consent to view the recording. If the person refuses to give consent, then the officer must obtain a search warrant to view the recording (**Board Review 08**).

According to New York State Penal Law 240.20, a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: 1. He engages in fighting or in violent, tumultuous or threatening behavior; or 2. He makes unreasonable noise; or 3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or 4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or 5. He obstructs vehicular or pedestrian traffic; or 6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or 7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose (**Board Review 10**).

Using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the “public harm” mens rea necessary to support a disorderly conduct charge (People v Baker, 20 NY3d 354 [2013]) (**Board Review 11**).

According to New York State Penal Law 140.05, a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises (**Board Review 12**).

PO Caraccioli stated that § 87(2)(b) could have been arrested for disorderly conduct, trespass, and recording in the stationhouse. § 87(2)(g)

With regard to trespassing, PO Caraccioli did not recall whether he ever told § 87(2)(b) to leave and the facts indicated that he took her phone before she could have reasonably complied with any such orders. Additionally, once PO Caraccioli took § 87(2)(b)'s phone, she had a legitimate reason to remain as she needed to secure its return. Lastly, while recording in a stationhouse was prohibited by NYPD rules, it was not illegal.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 13**).
- PO Caraccioli has been a member-of-service for fourteen years and has been a subject in five CCRB complaints and fifteen allegations, of which one was substantiated.

- 201706351 involved a substantiated allegation of force. The board recommended charges and the NYPD has not yet imposed discipline.

Mediation, Civil and Criminal Histories

- On December 20, 2018, this case was sent to mediation and on January 29, 2019, the case was returned to investigation as the complaint was no longer suitable for mediation.
- As of July 08, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (**Board Review 14**).

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 10

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date